

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 4:10-CV-78-FL

STEPHEN C. VICK,

Plaintiff,

v.

KAPSTONE KRAFT PAPER CORP.,

MARK O. HUTCHINGS,

Defendants.

ORDER

This matter comes before the court on the memorandum and recommendation (“M&R”) of Magistrate Judge James E. Gates, pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b). The magistrate judge recommends that plaintiff’s motion to remand (DE # 5) be granted and the case be remanded to the Superior Court of Halifax County, North Carolina, and that defendants’ motion to strike (DE # 4) be denied as moot without prejudice. No objections to the M&R have been filed.

Plaintiff, a citizen of Halifax County, North Carolina, filed complaint in superior court on May 12, 2010. On June 17, 2010, defendants filed a notice of removal based on diversity of citizenship jurisdiction under 28 U.S.C. § 1332(a). Plaintiff timely filed his motion to remand on June 25, 2010, arguing that removal is improper because cases are only removable under diversity jurisdiction if none of defendants are citizens of the forum state, and defendant Hutchings is alleged to be a citizen of Halifax County, North Carolina. See 28 U.S.C. § 1441(b). Defendants countered that removal was nevertheless proper under the doctrine of fraudulent joinder.

The magistrate judge outlined the applicable law regarding principles of removal and remand,

as well as fraudulent joinder. The magistrate judge correctly noted that in assessing an allegation of fraudulent joinder, all legal and factual issues must be resolved in favor of plaintiff. Mayes v. Rapoport, 198 F.3d 457, 464 (4th Cir. 1999). With this principle in mind, the magistrate judge found that plaintiff's motion to remand has merit, and that defendants did not meet the high burden of showing fraudulent joinder.

Absent a specific and timely filed objection, the court reviews a magistrate judge's recommendation under 28 U.S.C. § 636(b) only for "clear error," and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). The court has carefully considered the parties' filings and the magistrate judge's analysis. The court agrees with the magistrate judge that plaintiff's motion to remand should be granted and that defendants' motion to strike be denied as moot, and accordingly ADOPTS the M&R (DE # 24) as its own. Plaintiff's motion to remand (DE # 5) is hereby GRANTED, and the action is REMANDED to the Superior Court of Halifax County, North Carolina. Defendants' motion to strike (DE # 4) is DENIED as moot, without prejudice.

SO ORDERED, this the 6th day of March, 2011.


LOUISE W. FLANAGAN
Chief United States District Judge